

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

IN RE:

CASE NO. 05-31856-BKC-SHF

Chapter 7 Proceeding

JOHN P. ISHAM and SARA H. ISHAM,

Debtor. /

**ORDER DENYING MOTION TO DISMISS CHAPTER 7 CASE FOR LACK OF GOOD  
FAITH**

**THIS CAUSE** came before the Court on August 9, 2005 upon creditor Todd Neilson's Motion to Dismiss Chapter 7 Case for Lack of Good Faith. The Court, having considered the arguments of counsel and being otherwise fully advised in the premises, **denies** the Motion to Dismiss Chapter 7 Case for Lack of Good Faith.

**Factual Background**

John and Sara Isham (the "Ishams") commenced their voluntary chapter 7 bankruptcy on April 18, 2005. Todd Neilson ("Neilson") is an unsecured creditor of John and Sara Isham with

a claim of \$1,201,836.29. Neilson is the liquidating trustee in the bankruptcy of Reed E. Slatkin (“Slatkin”). Neilson’s claim arises out of a judgment entered on November 12, 2004, by the United States Bankruptcy Court for the Central District of California in the bankruptcy case *In re Reed E. Slatkin*, Case No. ND 01-11549-RR (the “Judgment”). Neilson filed an adversary proceeding against the Ishams in 2002 arising from the Slatkin bankruptcy. By way of the Judgment, the California bankruptcy court concluded that the Ishams received fraudulent transfers from a fifteen-year pyramid investment scheme operated by Slatkin. *Sub judice*, the Ishams claim that they had no knowledge that a fraudulent investment scheme was being perpetrated. Furthermore, the Ishams argue that there was no finding by the California bankruptcy court that they had knowledge of Slatkin’s scheme. Neilson was granted summary judgment in the California bankruptcy court based upon the representation that the Isham’s were investors who were found to have benefitted by Slatkin’s scheme to the extent of \$1,201,836.29, to the detriment of other investors.

Neilson argues that the Ishams moved from California to Florida and purchased a \$725,000 home in cash in order to protect their assets and avoid their liability to Neilson and therefore should be deemed to have filed their chapter 7 bankruptcy in bad faith. Neilson further argues that the Ishams failed to disclose various other assets and information on their bankruptcy schedules, including two IRA accounts, a transfer of a motor home, and a home equity line of credit. Based upon these allegations, Neilson is asking the Court to dismiss the Isham’s bankruptcy for bad faith pursuant to 11 U.S.C. § 707(a).

In response, the Ishams contend that they purchased their \$725,000 home in Florida in February 2003, a year and two months prior to filing their chapter 7. Additionally, they claim that Florida is their only residence and that they had established their domicile in Florida more

than a year prior to the filing of their chapter 7 proceeding. Therefore, the Ishams assert that they are entitled to avail themselves of the protection afforded through a chapter 7 bankruptcy proceeding, including the benefit of Florida's homestead exemption.

This Court previously has addressed the issue of whether a chapter 7 bankruptcy case can ever be dismissed for cause where there is bad faith or a lack of good faith. *In re RIS Inv. Group, Inc.*, 298 B.R. 848 (Bankr. S.D. Fla. 2003). In that case, Indian Spring County Club, Inc., a creditor, moved to dismiss the chapter 7 petition of the debtor pursuant to 11 U.S.C. § 707(a), which provides:

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including-

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28; and
- (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

The Court carefully analyzed 11 U.S.C. § 707(a) and held that there is no implicit good faith filing requirement for the filing of chapter 7 petitions. *Id.* The Court analyzed three lines of cases concerning dismissal of chapter 7 petitions for bad faith:

(a) The first line of cases holds that there is no good faith requirement for a chapter 7 bankruptcy. *In re Padilla*, 222 F.3d 1184 (9<sup>th</sup> Cir. 2000); *In re Etcheverry*, 242 B.R. 503 (D. Colorado 1999).

(b) The second line of cases holds that dismissal based on lack of good faith must be undertaken on an *ad hoc* basis. *In re Zick*, 931 F.2d 1124, 1129 (6<sup>th</sup> Cir. 1991). The *Zick* court explained that dismissal based on lack of good faith under 11 U.S.C. § 707 "... should be confined carefully and is generally utilized only in those egregious cases that entail concealed

or misrepresented assets and/or sources of income, and excessive and continued expenditures, lavish lifestyle, and intention to avoid a large single debt based on conduct akin to fraud, misconduct or gross negligence." *Id.*

(c) The third line of cases proffers that, even though certain actions of a debtor, which may constitute "cause" under section 707(a), may also be characterized as indicia of bad faith, framing the issue in terms of bad faith may tend to misdirect the inquiry away from the fundamental principles and purposes of chapter 7. *In re Bilzerian*, 258 B.R. 850, 856 (Bankr. M.D. Fla. 2001). *In re Motaharnia*, 215 B.R. 63 (Bankr. C.D. Cal. 1997). In *Motahornia*, the court held that bad faith might constitute cause only in the egregious situation where the debtor's motives for filing the chapter 7 petition are inconsistent with the established purpose of the Bankruptcy Code.

After reviewing the three lines of cases, this Court concluded that if a debtor is willing to surrender his or her nonexempt assets, regardless of the motive for the filing, the debtor would be entitled to chapter 7 protection. *In re RIS Inv. Group, Inc.*, 298 B.R. 848, 852 (Bankr. S.D. Fla. 2003), citing *In re Padilla*, at 1193. The actions of the Ishams to protect their homestead investment by filing for bankruptcy do not fall within the purview of egregious conduct that would cause this Court to retreat from the position taken in *RIS Inv. Group, Inc.* Similarly, the "for cause" grounds for dismissal under sub-section (1), (2) or (3) of §707(a) are not present in this case. Accordingly, it is

**ORDERED** that Neilson's Motion to Dismiss a Chapter 7 Case is **DENIED**.

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**Clerk of Court is directed to provide a copy of this Order on all parties in interest.**